

REMARKS

The applicants have carefully considered the Office action dated November 19, 2002 and the references it cites. In view of the following remarks, it is respectfully submitted that all pending claims are in condition for allowance and favorable reconsideration is respectfully requested.

At the outset, applicants note that the amendments to the specification objected to in the Office action have been reversed as requested by the Examiner. These amendments are made without prejudice to reinstating the same, but have been made to moot the issue for at least the time being.

Applicants respectfully traverse the § 112, first paragraph, rejections of claims 70, 71, and 159. Each of those rejections are addressed below.

Turning first to the § 112, first paragraph, rejection of claim 70, the Office action contends that the recitation “recording the time that reception by the receiver is ended” is not supported by the specification. Applicants respectfully submit that this contention is in error. Applicants’ specification clearly discloses software agents that may reside in a receiver such as a digital television (page 26, ll. 2-8) to “monitor operating tasks in order to create time-stamped records containing ... data regarding operation of the particular piece of equipment in which the software agents are resident.” (Page 26, ll. 10-14)(emphasis added). The specification goes on to explain that the monitored “operating tasks may be operating system events of the operating system used by the equipment in which the software agent is resident.” (Page 53, ll.1-5). It is hard to imagine a more fundamental operating system event then shut down which, of course, is clearly a time at which reception by the receiver is ended. Since in a disclosed example, the software agents are expressly

described as creating time-stamped records of operating system events, it is clear that the specification contemplates and supports recording a time at which reception by the receiver is ended as recited in claim 70. Indeed, the specification goes so far as to state that “the software agents 112, 118, and 122 may monitor any function of the monitored equipment as long as the desired data is collected.” (Page 53, ll.5-7). Since terminating reception is clearly a function of the monitored equipment, it is self-evident that applicants’ specification provides explicit support for the phrase “recording the time that reception by the receiver is ended” as contained in claim 70. Accordingly, it is respectfully submitted that the § 112, first paragraph, rejection of claims 70 and 71 must be withdrawn.

The § 112, first paragraph, rejection of claim 159 must also be withdrawn. The Office action alleges that the phrase “and radio” is not supported by applicants’ specification. However, applicants’ specification expressly indicates that “changes in the methods of measuring the reception of television and radio programming are required because of a planned change-over from analog to digital broadcasting.” (Page 4, ll. 3-5)(emphasis added). Further, many of the examples given in applicants’ specification involve the detection or attempted detection of audio codes embedded in a program stream, and/or the collection of audio signatures of tuned programs. (see, for example, Page 19, ll. 15-18 which states, “The first embodiment 60 measures such tuning by detecting program identification codes and/or extracting signatures from the audio portion of the television signal to which a receiver is tuned.”). Clearly, there is a direct correlation between the audio portion of a television program and a radio signal, and a person of ordinary skill in the art

would have no trouble recognizing from these disclosures that detecting audio codes and/or collecting audio signatures could readily be performed interchangeably on audio signals output by television speakers and audio signals output by radio signatures. To state otherwise is to lower the level of ordinary skill below the level of common sense. Indeed, this point is further enforced by the applicants' specification which expressly states, "although not shown in Figures 2-5, the digital television reception equipment of the embodiments shown therein may further include auxiliary digital television equipment such as a VCR, a digital video disk player, a video game, or other entertainment system." (Page 53, l. 22 – Page 54, l. 3). It is hard to imagine a more widespread entertainment system used with a television than a stereo system including radio reception capability. Thus, a person of ordinary skill would readily recognize that the audio signal monitoring techniques disclosed in the application were in no way limited to television entertainment systems but would instead encompass any entertainment system that could be coupled to a television including, for example, a radio. Accordingly, the § 112, first paragraph, rejection of claim 159 is in error and must be withdrawn.

Turning to the art rejections, the Office action rejected claims 70, 71 and 159 as being unpatentable over Aras, U.S. Patent 5,872,588. Applicants respectfully traverse this rejection.

Before detailing the basis of that traversal, applicants respectfully submit that, in rejecting claims 70, 71 and 159 based on Aras, the Office is acting in an inconsistent manner that is an affront to justice and the public interest. In particular, as the Office well knows, claims 70, 71, and 159 have been copied from Massetti, U.S. Patent 5,974,299. The Massetti Patent enjoys

a filing date of May 27, 1998 and was expressly allowed over the Aras Patent. Therefore, in examining the very claims now pending in this application, the Patent Office previously ruled that these exact claims are patentable over Aras.

The application now before the Office was filed on May 12, 1998, two weeks prior to the Massetti Patent. Therefore, as a matter of law and consistency, if the claims pending in this application are patentable over Aras to Massetti (as the Office has already ruled), then those same claims must be patentable to the instant applicants over Aras; unless the office has concluded that those same claims are not patentable to Massetti. If the Office has concluded that it erred in issuing the Massetti Patent, and that the claims now pending in this application are not patentable to either Massetti or the instant applicants, then in the interest of the public, the Office must correct its error by initiating a reexamination of the Massetti Patent. If, on the other hand, the Office does not believe it has erred in issuing the Massetti Patent, then to act consistently with that conclusion and the law, the Office must drop the rejections based on Aras and declare an interference between the instant application and the Massetti Patent as requested in applicants' prior response.

Therefore, applicants respectfully request that the Office discharge its responsibility to the public as demanded by law and equity by either reexamining the Massetti Patent at its own initiative, or by dropping the Aras rejections in this application and declaring an interference without further delay.

Applicants hereby put forth the following rationale for the traversal of the rejections based on Aras. Independent claim 70 recites a method including extracting at least one identification code for at least one digital stream of a

first channel from a control stream of a multiplexed digital transmission.

While Aras certainly discloses extracting an identification code, that code is extracted from a data stream, not a control stream of a multiplexed digital transmission. The Office appears to be relying upon the general reference to MPEG compression in Aras for evidence of such a control stream. However, to the extent MPEG includes control information in a form that may be referred to as a “control stream,” that control information is merely used as a roadmap to reconstruct frames via the MPEG decompression process. It is quite clear that the codes of Aras (i.e., the AVI codes) are not carried by that “control stream.” Indeed, the codes of Aras have nothing to do with the MPEG algorithm. Further, Aras in no way timestamps codes which appear in the “control stream” associated with the MPEG process as a vehicle for determining when reception of a channel begins. Thus, the reference to MPEG in Aras does not disclose a “control stream of a multiplexed transmission” as recited in the pending claims and the reference to MPEG in Aras is plainly irrelevant to the patentability issue.

This point is irrefutably demonstrated by reviewing the discussion of the identification codes in the specification of Aras. As shown in FIG. 3 of Aras, Aras contemplates inserting identification codes (AVI-B, AVI-F) into a data stream, not a control stream. Indeed, Aras could not be more explicit on this point. It states:

AVI information [identification codes] may be pre-embedded in the AVM [audio visual material] or integrated on the fly as the AVM is broadcast or the AVI information may be partially pre-embedded and partially embedded on the fly. ... only AVI-B, only AVI-F, or a combination of AVI-B and AVI-F field may be embedded into the content, as shown in FIG. 3.

(Col. 11, ll.44-67)(emphasis added). If that were not demonstration enough, Aras also states, "Each of the plurality of AVMs that are provided to the home station would have the AVI embedded in their respective AVM data streams (or at least those for which behavior and monitoring is desired)." (Col, 12, ll. 18-21)(emphasis added). Therefore, it is quite clear that Aras discloses only embedding and extracting identification codes from a content stream. There is no disclosure or suggestion in Aras of multiplexing a control stream with the data stream (e.g., an AVM), of extracting an identification code (e.g., an AVI) from a control stream, or of time stamping the identification codes extracted from such a control stream. Therefore, Aras cannot be said to teach or suggest the recitations of independent claim 70. Accordingly, claim 70 and all claims depending therefrom are patentable to the applicants over Aras and an interference must be declared.

If the Examiner is of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is invited to contact the undersigned at the number identified below.

Respectfully submitted,

GROSSMAN & FLIGHT, LLC.
Suite 4220
20 North Wacker Drive
Chicago, Illinois 60606
(312) 780-1020

By:


James A. Flight
Registration No. 37,622

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